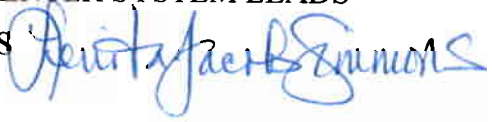


U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION Work-Flex
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TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 6-99

TO : ALL STATE WORKFORCE LIAISONS
 ALL STATE EMPLOYMENT SECURITY AGENCIES
 ALL STATE WORKER ADJUSTMENT LIAISONS
 ALL ONE-STOP CAREER CENTER SYSTEM LEADS

FROM : LENITA JACOBS-SIMMONS
 Deputy Assistant Secretary



SUBJECT : Work-Flex Transition Guidelines Under WIA

1. Purpose. To provide guidelines for implementation of the Work-Flex waiver authority authorized by the Workforce Investment Act (WIA) of 1998.

2. References. Department of Labor (DOL) Appropriations Acts for funds available in Program Year (PY) 1997 (Pub. L. 104-208) and PY 1998 (Pub. L. 105-78); Workforce Investment Act of 1998 (Pub. L. 105-220, §192); 20 CFR Part 661, Subpart D, WIA Interim Final Rule, (published at 64 FR 18662 (Apr. 15, 1999)); Planning Guidance and Instructions for Submission of the Strategic Five-Year Plan for Title I of WIA and the Wagner-Peyser Act (published at 64 FR 9402 (Feb. 25, 1999)); State Unified Plan Planning Guidance (Federal Register Notice (Jan. 14, 2000)).

3. Background. The Workforce Flexibility Partnership Demonstration Program (Work-Flex) was established pursuant to the Work-Flex waiver authority provided in DOL's Appropriations Act for PY 1997 (Pub. L. 104-208) and PY 1998 (Pub. L. 105-78), for funds available through PY 2001, i.e., through June 30, 2002.

The Work-Flex program provided authority to States to grant waivers of certain provisions of Titles I-III of the Job Training Partnership Act (JTPA) requested by Service Delivery Areas (SDAs) or Substate Areas (SSAs). It also authorized the Secretary of Labor to waive certain provisions of §§8-10 of the Wagner-Peyser Act included in an approved Work-Flex Plan (with certain exceptions). The Secretary was authorized to grant this authority to up to six States for up to five years. In January 1998, the Employment and Training Administration (ETA) National Office selected six Work-Flex States (Florida, Iowa, Ohio, Oregon, South Dakota and Texas) through a competitive process.

4. Work-Flex Transition to WIA. The Workforce Investment Act, at §192, expands the eligibility for Work-Flex authority to all States. The 6-State Work-Flex demonstration program initiated under JTPA is continued under WIA, as authorized by the Secretary. Prior to WIA, the extent to which JTPA programs developed integrated, comprehensive delivery systems was primarily determined at the local

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level. School-to-Work, One-Stop and Welfare-to-Work served to encourage and reward programs that took a more systemwide approach to consolidation and integration of programs both within and outside of JTPA. WIA, and the flexibility it provides, builds on these earlier efforts to develop and streamline local and statewide workforce investment systems.

The Work-Flex provisions under WIA are essentially the same as those under JTPA. One difference is that, unlike the demonstration program, WIA Work-Flex designations will be made on a noncompetitive basis.

WIA tightens current authorizing language contained in the Department's Appropriations Act by adding several new provisions to the list of provisions that are exempted from the Work-Flex waiver authority under JTPA. These new exemptions are: the basic purposes of WIA, Title I; establishment and functions of local areas and local boards; review and approval of local plans; and worker rights, participation and protection. Other exemptions are discussed below.

While in general there are fewer requirements to be waived under WIA, the Department believes the new Work-Flex authority will provide valuable flexibility to States and local areas as they implement the new legislation.

5. WIA Work-Flex Provisions. Under Work-Flex, Governors are granted the authority to approve requests for waivers of certain statutory and regulatory provisions of the WIA statute (Title I) submitted by their local areas. States may also request from the Secretary waivers of certain requirements of the Wagner-Peyser Act (§§ 8-10) and certain provisions of the Older Americans Act applicable to State agencies that administer the Senior Community Service Employment Program (SCSEP). [SCSEP is authorized by Title V of the Older Americans Act and provides part-time community service employment to low-income persons age 55 and over through grants from the ETA National Office. It is not included in the current JTPA Work-Flex Program.] The Secretary may grant Work-Flex authority for a period of not more than five years.

6. Performance. The legislative intent of the Work-Flex provisions is to authorize States and Local Areas the operational flexibility they need to improve employment and training productivity for adult, dislocated, and youth populations. One of the underlying principles of Work-Flex is that it will result in improved performance outcomes for persons served and that waiver authority will be granted in consideration of improved performance. As indicated at 20 CFR 661.440(b), a State's Work-Flex designation is conditioned on the State demonstrating it has met the agreed upon outcomes contained in its Work-Flex Plan.

Furthermore, Title I of WIA calls for a comprehensive accountability system to assess the effectiveness of State and local areas in providing employment and training services; it requires a focus on results defined by the core performance indicators; measures of customer satisfaction; emphasis on continuous improvement; annual performance levels developed as a result of partner negotiations; incentive awards and financial sanctions based on performance; and dissemination of reports and results.

The Department is developing the WIA accountability system in three stages: (a) develop definitions of core measures and temporary reporting instructions for "early implementing" States in PY 1999; (b) work with States and local governments to develop improved definitions and reporting requirements for PY 2000 and beyond; and (c) develop common definitions of performance measures across programs with ETA, the Department of Education and other Federal agencies.

The Department is planning to develop final accountability guidance by January 2000, which describes the entire system, including assigned responsibilities, and specifics regarding waivers, Work-Flex, and related provisions of the Act. This will provide sufficient time for States interested in Work-Flex to incorporate their requests either in their WIA Strategic plans or in related plans for a July 1, 2000 WIA implementation.

7. Six-State Demonstration Program. The Work-Flex demonstration States and local areas may use their existing Work-Flex and/or general waiver authority and allowable activities under JTPA, to plan for and implement WIA reforms. Activities that are allowable during this phase include: (1) strategic planning; (2) establishment of State and local workforce investment boards; (3) consultation with One-Stop partners; (4) establishment of ITA systems; and (5) establishment of consumer report systems.

Work-Flex States planning to submit State Plans by April 1, 2000, for WIA implementation beginning on July 1, 2000 (Identified as "Option 3 States" in the WIA planning guidance) may transition to WIA using JTPA authority, existing Work-Flex and general waiver authority and the authority under WIA to spend up to 2 percent of JTPA funds (50% of which must be made available to local areas) for the transition planning activities indicated above. (See 20 CFR 667.900 and 2/25/99 Federal Register Notice on Planning Guidance.)

The six demonstration States are not required to submit new Work-Flex Plans. Rather, their current plans will be modified to provide for the transition to WIA and adherence to the Work-Flex provisions in WIA §192. Specific Wagner-Peyser Act waivers granted to a State under Work-Flex will be extended on the same basis. The Governor may allow existing JTPA Work-Flex waivers that are applicable to WIA provisions to continue in effect under WIA. JTPA waivers not related to WIA may be continued for the duration of the JTPA grant and fund availability. Demonstration States will retain their current reporting requirements until further notice.

8. National Emergency Grants. Applications of existing general statutory or regulatory waivers and Work-Flex waivers to National Emergency Grants authorized under §173 of WIA may be requested by State and Local Board grantees, and approved by the Department. The application for grant funds must describe any waivers which the applicant wishes to apply to the project that the State has approved for implementation in the applicable area under Work-Flex waivers, or that the State and Local Board, as applicable, have been granted under their general statutory/regulatory waiver plan. The grant application must identify the provisions to be waived, the operational barriers to be removed, and the effects on the outcome of the project. The Department considers such requests as part of the overall application review and decision process.

If, during the operation of a National Emergency Grant project, the grantee wishes to apply a waiver not identified in the application, the grantee must request a modification which includes the provision to be waived, the operational barriers to be removed and the effect upon the outcome of the project. (20 CFR 671.150)

9. Single State Workforce Investment Areas. A State which has been designated by the Governor as a single State local area under WIA §116(b) may apply for Work-Flex designation. If a State indicates in the WIA Title I State Plan that the State will be treated as a local area under Title I, the Governor may designate the State Board to carry out any of the prescribed functions of the Local Board for the purposes of Work-

Flex. Therefore, all references in this TEGL to local areas/boards will include a State Board performing the functions of a Local Board in a single local area State.

In addition to the information in item 10, below, Single State Area Work-Flex Plans should describe the process and time line used to provide an opportunity for public comment, including how local chief elected officials, representatives of businesses and labor organizations, and other appropriate partners provided input into the development of the Work-Flex Plan, prior to the submission of the plan. Consistent with WIA §117(c)(4) (Single State Area), the plan should identify the types of entities authorized by the Governor to request waivers on behalf of the local area, e.g., local elected officials, regional workforce investment boards, the business community, labor organizations, program operators/service providers, welfare agencies, and community-based organizations, as appropriate. If the plan is submitted as part of the 5-year Strategic Plan, this section need only reference the pertinent part(s) of the 5-year plan. Include a summary of any comments received on the Work-Flex Plan, and demonstrate how comments were considered in the plan development process. (WIA §117(c)(4); §118(b)(7) and (c)(3); and §192(b))

10. Work-Flex Plan Development. States requesting designation as a Work-Flex State must submit a Work-Flex Plan which includes descriptions of:

a. The process by which local areas in the State may submit and obtain approval by the State of applications for waivers of requirements applicable under Title I of WIA, including provisions for public review and comment on local area waiver applications.

b. The statutory and regulatory requirements of Title I that are likely to be waived by the State under the plan.

c. The requirements applicable under §§8 through 10 of the Wagner-Peyser Act that are proposed to be waived, if any.

d. The statutory and regulatory requirements of the Older Americans Act of 1965 applicable to State agencies on aging with respect to administration of the Senior Community Service Employment Program (SCSEP) that are proposed to be waived, if any.

e. The outcomes to be achieved by the waiver authority including, where appropriate, revisions to adjusted levels of performance included in the State or Local Plan under Title I of WIA.

f. Special measures (in addition to current procedures) to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

g. Prior to submitting a Work-Flex Plan to the Secretary for approval, the State must provide to all interested parties and to the general public adequate notice and a reasonable opportunity for comment on the waivers proposed to be implemented. The plan should describe the process used for ensuring meaningful public comment. Include a description of the Governor's and the State Workforce Investment Board's involvement in drafting, reviewing and commenting on the plan. Describe actions taken to collaborate in the development of the State Work-Flex Plan with local chief elected officials, local workforce investment boards and youth councils, the business community (including small businesses), labor organizations, educators, vocational rehabilitation agencies, and other interested parties, such as

service providers, welfare agencies, community-based organizations, transportation providers, and other stakeholders. (see WIA §§111(g), 192 (d), and 2/25/99 Federal Register planning notice.)

11. Work-Flex Plan Submission.

a. The Work-Flex Plan may accompany the State's 5-year Strategic WIA Plan, or the Title I portion of the State's Unified Plan, as appropriate, or it may be submitted separately. If submitted separately, the Work-Flex Plan must identify related provisions in the State's 5-year Strategic Plan. (20 CFR 661.430(b))

b. The Work-Flex program will be implemented by making the approved State Work-Flex Plan a part of the WIA Grant Agreement, and, where applicable, the SCSEP National Office Grant through a grant modification. In the case of Wagner-Peyser, the approved plan will be incorporated into the Governor-Secretary Agreement through an addendum to that agreement.

c. The Work-Flex Plan should not exceed 10 pages, exclusive of any necessary attachments.

d. Plans must be signed by the Governor or the State's WIA designated signatory official, with the name typed below the signature.

e. States requesting designation as a Work-Flex State should submit their Work-Flex Plan (with an original signature), along with two copies, to the U. S. Department of Labor as follows:

Mr. Raymond L. Bramucci, Assistant Secretary
Employment and Training Administration
U.S. Department of Labor
200 Constitution Ave., NW, Room S-4231
Washington, D.C. 20210
ATTN: Eric Johnson

f. One copy of the Plan (with an original signature) must also be sent simultaneously to the appropriate ETA Regional Administrator.

12. Exceptions. Work-Flex waivers may not be granted unless requested by and granted to local Workforce Investment Areas, as defined in WIA §116, and in accordance with procedures described in the State Work-Flex Plan. The following statutory and regulatory requirements are excluded from the Work-Flex authority and may not be waived:

a. Workforce Investment Act. 1) wage and labor standards; 2) grievance procedures and judicial review; 3) nondiscrimination; 4) eligibility of participants; 5) allocation of funds to local areas; 6) establishment and functions of local areas and local boards; 7) review and approval of local plans; 8) worker rights, participation, and protection; 9) statutory or regulatory provisions applicable at the State level may not be waived by a State under the Work-Flex authority granted to a State, but may be waived by the Secretary in accordance with the requirements of 20 CFR 661.410 and 420 (general statutory and regulatory waivers); and 10) requirements relating to the basic purposes of WIA Title I, including any of the statutory or regulatory provisions essential to the key reform principles embodied in WIA, as described in 20 CFR

661.400, except in extremely unusual circumstances. The seven key reform principles are:

- 1) Streamlining services and information to participants through a One-Stop delivery system;
- 2) Empowering individuals to obtain needed services and information to enhance their employment opportunities;
- 3) Ensuring universal access to core employment- related services;
- 4) Increasing accountability of States, localities and training providers for performance outcomes;
- 5) Establishing a stronger role for Local Boards and the private sector;
- 6) Providing increased State and local flexibility to implement innovative and comprehensive workforce investment systems; and
- 7) Improving youth programs through services which emphasize academic and occupational learning.

b. Wagner-Peyser Act. 1) the provision of services to unemployment insurance claimants and veterans; 2) universal access to basic labor exchange services without cost to job seekers; and 3) provisions of §§8-10, unless included in a Work-Flex Plan approved by the Secretary.

c. Older Americans Act of 1965. 1) the basic purposes of OAA; 2) wage and labor standards; 3) eligibility of participants; 4) standards for agreements; and 5) OAA provisions, unless included in a Work-Flex Plan approved by the Secretary.

d. Other Legislation. Provisions of other legislation and regulations which extend beyond the waiver authority provided in WIA; e.g., DOL appropriations acts, non-WIA regulations, and other Federal statutes, are not subject to waiver under the Work-Flex legislative provision. Except for §§8-10, other sections of the Wagner-Peyser Act, including the provision of services and merit-staffing requirements, may not be waived.

13. Regional Office Role. Under JTPA, the ETA Regional Offices have not been fully involved in the Work-Flex Demonstration Program primarily due to the competitive nature of the selection process. Now that Work-Flex has been expanded to all States on a noncompetitive basis under WIA, the Regional Offices will take a more active role in the management of the program. In addition to day-to-day monitoring and oversight activities, this will involve assisting States in developing Work-Flex applications and reviewing the applications in conjunction with National Office staff. Specifically, Regional Offices will be responsible for reviewing, negotiating and recommending National Office disposition of Work-Flex State Plans.

14. Reporting. Separate Work-Flex reports are not required. The reporting of Work-Flex activities will be included in the standard WIA reporting instructions for financial, participant and performance reports issued by ETA. (20 CFR 667.300) As indicated above, the six demonstration States will retain their current reporting requirements.

15. Action Required.

a. States interested in being designated as a Work-Flex State, are encouraged to work closely with their ETA Regional Office in the development of their Work-Flex Plan.

b. States are expected to fully involve local areas in the development of the Work-Flex Plan. They are also requested to distribute the information on both the Federal process described in this TEGL and the State-established waiver process to their State staff (both JTPA/WIA and ES), the SESA local offices, the JTPA/WIA local areas, and other interested stakeholders throughout the State in accordance with item 10. g., above.

c. In accordance with item 11. above, States requesting designation as a Work-Flex State should: 1) submit an original and two copies of a Work-Flex Plan meeting the requirements of this directive, to the ETA National Office and one copy to their ETA Regional Administrator; or 2) include the plan in the State's 5-Year Strategic Plan.

16. Inquiries. Questions concerning this directive may be addressed to the appropriate ETA Regional Office.